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AUTHOR Matthias, Mary
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ABSTRACT

This document lists recommendations for changes in laws, resources and programs relating to drug law enforcement made to the Wisconsin Special Committee on Drug Law Enforcement, as of August 25, 1989. Some of the recommendations are based on comments of Committee members, rather than persons testifying to the Committee. Each recommendation is followed by brief background information, which includes an identification of the person making the recommendation. In order to collect background information for some of the recommendations, limited contacts were made by Committee staff with persons who did not appear before the Committee. This document does not attempt to thoroughly discuss or analyze each recommendation. The document is limited to recommendations related to drug law enforcement and does not discuss any recommendations made to the Committee regarding drug treatment or education. Four recommendations are made in the area of drug enforcement investigation; five recommendations in the area of prosecution; six recommendations in the area of penalties; two recommendations in the area of forfeitures and surcharges; four recommendations in the area of funding; and five miscellaneous recommendations. (ABL)

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Wisconsin Legislative Council Staff — Madison, Wisconsin

Special Committee on Drug Law Enforcement — September 14, 1989

DISCUSSION PAPER 89-2*

RECOMMENDATIONS FOR CHANGES IN LAWS, RESOURCES AND PROGRAMS RELATED TO DRUG LAW ENFORCEMENT

This Discussion Paper was prepared for the Special Committee on Drug Law Enforcement. It lists recommendations for changes in laws, resources and programs relating to drug law enforcement made to the Special Committee, as of August 25, 1989. Some of the recommendations summarized in this Paper are based on comments of Committee members, rather than persons testifying to the Committee.

In this Paper, each recommendation is followed by brief background information, which includes an identification of the person making the recommendation. In order to collect background information for some of the recommendations, limited contacts were made, by Committee staff, with persons who did not appear before the Committee. Those persons are identified in the Paper.

The purpose of the Paper is to assist the Committee in its initial review of the recommendations made to date; it does not attempt to thoroughly discuss or analyze each recommendation. Additional information will be provided to the Committee, as appropriate, for any of the recommendations the Committee wishes to pursue further. In addition, the Committee may consider issues related to drug law enforcement which are not covered in this Paper.

This Paper is limited to recommendations related to drug law enforcement; the Paper does not discuss any recommendations made to the Committee regarding drug treatment or education.

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*This Discussion Paper was prepared by Mary Matthias, Staff Attorney, Legislative Council Staff.

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A. INVESTIGATION

Recommendation 1: Establish a Law Enforcement Intelligence Network (LEIN) in Wisconsin.

At the April 20, 1989 meeting of the Special Committee, Sergeant James Waid, Outagamie County Sheriff's Department, said that several states, including Illinois, have Law Enforcement Intelligence Networks (LEIN) in place. He said that a LIEN system would be a useful tool for intelligence gathering and sharing in Wisconsin. In addition, at the May 8, 1989 meeting of the Committee, Theodore Meekma, Executive Director, Office of Justice Assistance (OJA), said there is a need for a central intelligence agency for drug law enforcement in Wisconsin. At the July 25, 1989 meeting of the Committee, Philip Malsack, Chief Deputy, Marquette County Sheriff's Department, Montello, suggested creating a "super drug enforcement squad" which would be responsible for intelligence operations.

According to Buck Ballow, Assistant Bureau Chief, Illinois Department of Criminal Investigation, the Illinois LEIN has been in place for three years. The LEIN is administered by the Illinois State Police, and approximately 150 Illinois law enforcement agencies participate in the network. The State Police maintains the LEIN computer database into which it enters information telephoned in by local law enforcement agencies. Any local law enforcement agency which is a member of the LEIN can call the State Police and request a computer search for any type of information. In Illinois, the state is divided into four regions for purposes of the LEIN. Each region holds quarterly meetings to discuss the operation of the network. In addition, the State Police holds annual training conferences for all member agencies. According to Mr. Ballow,

the LEIN system is intended to be a fast and efficient method of information-sharing among local enforcement agencies in the state.

According to Frank Meyers, Administrator, Division of Criminal Investigation (DCI), Department of Justice (DOJ), the State of Wisconsin does not have an information-sharing network similar to the Illinois LEIN system. Mr. Meyers indicated that the DOJ is presently discussing the possibility of implementing a system of that type. He said that the DOJ would need additional funding and personnel to operate such a system.

Recommendation 2: Establish a unit within the Division of Criminal Investigation to trace assets which are subject to forfeiture under the Uniform Controlled Substances Act.

Under the Uniform Controlled Substances Act [ch. 161, Stats.], certain items related to violations of the Act may be seized by a law enforcement officer or a Pharmacy Examining Board employe and are subject to forfeiture. A complete list of the items which are subject to seizure and forfeiture can be found on p. 8 of Staff Brief 89-1, Wisconsin's Drug Laws and Enforcement, dated April 13, 1989.

Committee members and several persons testifying to the Committee stated that local law enforcement agencies lack the time and expertise to effectively trace the assets of persons convicted of drug law violations. For example, at the May 8, 1989 meeting of the Committee, Committee member Patrick Kenney said that most local law enforcement officers are not equipped to pursue and trace drug assets. He said tracing assets is very complicated and time-consuming and that attorneys are needed to effectively trace such assets.

At the August 25, 1989 meeting of the Committee, Committee member James Chizek asked whether it would be feasible to create a special unit in the DCI, to pursue the seizure and forfeiture of assets related to drug law violations. He suggested that this unit take over investigations from local law enforcement agencies after all evidence required for conviction of the violator is obtained.

Currently, the Bureau of Narcotics and Dangerous Drugs (the Bureau), in the DCI, provides assistance to local law enforcement agencies in the investigation of controlled substances violations, in response to requests from local agencies. However, the Bureau does not systematically provide assistance in tracing assets.

According to Richard S. Larson, Acting Director of the Bureau, the Bureau is aware that local law enforcement agencies lack the time and expertise to trace assets. He said the DOJ provides training in asset

tracing to local law enforcement agencies, but that assets could be best traced by persons with accounting backgrounds.

Mr. Larson said that the Bureau is currently looking into these problems. He said that if the Bureau had sufficient resources and qualified personnel, it would be possible for it to trace assets in a case even if the Bureau was not involved in the initial investigation of the drug law violation.

Recommendation 3: Expand the role of the State Traffic Patrol in drug law enforcement.

At the August 25, 1989 meeting of the Special Committee, Peter Grimm, District Attorney, Fond du Lac County, said that the Wisconsin State Traffic Patrol does not have a mission to enforce the drug laws. He said that the State Traffic Patrol could provide more assistance in drug law enforcement if its mission were expanded to include enforcement of drug laws.

The authority of the State Traffic Patrol is set forth in s. 110.07, Stats. The major duty of the State Traffic Patrol is to enforce and assist in the administration of laws relating to motor vehicles, transportation and traffic offenses. The State Traffic Patrol is not authorized to routinely enforce any other laws. However, a State Traffic Patrol officer may make an arrest in the course of a legitimate traffic stop under certain circumstances. Specifically, any officer of the State Traffic Patrol, while in uniform and on duty, may make an arrest when he or she believes, on reasonable grounds, that a warrant for a person's arrest has been issued in the state, that a felony warrant has been issued in another state or that the person is committing or has committed a crime within 24 hours before the arrest. After making such an arrest, the State Traffic Patrol must deliver the arrestee to the chief of police or the sheriff in the jurisdiction where the arrest was made. The State Traffic Patrol has no authority to conduct any further investigation [s. 110.07 (2m), Stats.].

According to Alice Morehouse, State Traffic Patrol, in addition to carrying out its statutorily-designated functions, the State Traffic Patrol makes an effort to provide information on drug-related offenses to the DCI. This information helps the DCI track statewide trends in criminal activities.

Ms. Morehouse said that some other states' traffic patrols conduct "profiling." Those traffic patrol officers are trained to identify vehicles which fit the typical "profile" of a vehicle which is used for transportation of controlled substances. When a traffic patrol officer

observes such a car, he or she looks for a traffic-related reason to stop the car, and then, if probable cause exists, the officer may conduct a search of the vehicle.

According to Ms. Morehouse, the State Traffic Patrol has been discussing, with the Governor, the possibility of expanding training of State Traffic Patrol officers to include training in the description of typical behaviors of controlled substance violators. The intent of this training would be only to make State Traffic Patrol officers aware that a person they have stopped for a traffic offense is exhibiting those particular behaviors. The State Traffic Patrol does not believe that it has authority to conduct profiling operations.

Recommendation 4: Create a state clearinghouse for the sharing of equipment and personnel among law enforcement agencies.

At the July 25, 1989 meeting of the Special Committee, Philip Malsack, Chief Deputy, Marquette County Sheriff's Department, Montello, said that his Metropolitan Enforcement Group (MEG) has difficulty finding qualified undercover officers. The unit cannot use its own officers in undercover operations because the officers are known in the community. Mr. Malsack suggested that a state or area-wide clearinghouse be established to coordinate the sharing of personnel among local law enforcement agencies.

Currently, the sharing of equipment and personnel by local law enforcement agencies is not coordinated on a statewide basis. In some cases, the Bureau of Narcotics and Dangerous Drugs, DCI, acts as a liaison between local law enforcement agencies to coordinate investigations of mutual interest. However, the Bureau does not routinely coordinate the sharing of equipment or personnel between local law enforcement agencies.

There are 24 multi-agency drug enforcement units in Wisconsin, which are formed on the basis of voluntary cooperative agreements between the local law enforcement agencies involved. Thirteen of the multi-agency units consist of agencies within a single county, while the remaining 11 multi-agency units consist of agencies from two or more counties. [For a complete description of multi-agency drug enforcement units, see Staff Brief 89-1.]

B. PROSECUTION

Recommendation 1: Authorize admission of one-party consent wiretap recordings into court.

At the May 8, 1989 meeting of the Special Committee, Committee member James Babler said that the state's wiretap law should be changed to allow the admission of information obtained through a one-party consent wiretap as evidence in court.

Under current law, a conversation or other oral, electronic or wire communication may be lawfully recorded by a person acting under color of law when one party to the communication consents to the recording. However, according to the Wisconsin Supreme Court, the contents of such a recorded communication or any evidence derived from the communication may be introduced by the state in a state criminal proceeding only if disclosure in a criminal proceeding is authorized by state law [State ex rel. Arnold v. County Court, 51 Wis. 2d 434 (1971)]. Currently, such disclosure is not authorized by state law.

1989 Senate Bills 115 and 247 would authorize the disclosure of lawfully-recorded communications intercepted pursuant to one-party consent, and the evidence derived from the communication, in a court proceeding in which a person is accused of a controlled substance felony. [See DRUG LAW MEMO NO. 1, Recent Legislative Enactments and Proposals Relating to Drug Law Enforcement, dated April 13, 1989 (Revised July 18, 1989), for a complete description of 1989 Senate Bills 115 and 247 and their status.]

Recommendation 2: Exempt drug forfeiture actions from circuit court filing fees.

Under current law, a civil action must be brought to cause the forfeiture of any property seized by law enforcement personnel under the Uniform Controlled Substances Act. The district attorney of the county within which the property was seized must commence the forfeiture action in circuit court within 30 days after the seizure of the property, except in special circumstances [s. 161.555, Stats.].

Current law requires any person who commences a civil action in a circuit court to pay a $60 filing fee to the clerk of court. Unless a specific exemption is provided in the statutes, governmental units must pay this fee. The clerk of court forwards 50% of the filing fee to the State Treasurer for deposit in the state general fund and retains the balance for use by the county [s. 814.61 (intro.) and (1), Stats.].

A district attorney must pay the $60 filing fee to the clerk of court when bringing a civil action for forfeiture of property seized under the Uniform Controlled Substances Act; no exemption is provided.

At the May 8, 1989 meeting of the Special Committee, Committee member John Johnson suggested that this filing fee be reviewed. He said that this fee, along with the time commitment required from district attorneys to prosecute forfeiture actions, creates a disincentive to the seizure of drug-related assets.

Recommendation 3: More closely model Wisconsin's grand jury system after the federal grand jury system.

Under both state and federal law, grand juries may be used to discover and investigate criminal wrongdoing and to accuse individuals by indictment. At the Special Committee's April 20, 1989 meeting, Sergeant James Waid, Outagamie County Sheriff's Department, noted that grand juries are rarely used in Wisconsin and suggested that the Wisconsin grand jury system be more closely modeled after the federal grand jury system.

Sergeant Waid did not identify specific aspects of the Wisconsin grand jury system that he believes should be changed. However, the following differences between the federal and state grand jury systems may account, at least in part, for the use of grand juries under the federal system and the general lack of use of state grand juries:

a. The 5th Amendment to the U.S. Constitution requires the use of a grand jury in federal criminal cases. Specifically, the Amendment provides, in part:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces....

There is no similar requirement in Wisconsin. A state criminal proceeding may be initiated: (1) upon indictment by a grand jury; (2) upon a finding, in a John Doe proceeding, that there is probable cause that the defendant committed a crime; or (3) by the district attorney, based on information and belief [ss. 968.02, 968.06 and 968.26, Stats.].

b. Under the Wisconsin system, following indictment by a grand jury, the defendant is entitled to a preliminary hearing to determine whether there is probable cause to believe he or she committed a crime [s. 968.06, Stats.]. Rules of evidence apply at the preliminary hearing. Under the federal system, there is no preliminary hearing following a grand jury

indictment; the defendant is arraigned and tried on the grand jury indictment.

c. Under the Wisconsin system, any witness appearing before a grand jury may have counsel present in the grand jury room, although the counsel is not allowed to examine his or her client, cross-examine other witnesses or argue before the judge. Counsel may consult with his or her client while before the grand jury [s. 756.145, Stats.]. Under the federal system, witnesses may not have counsel present in the grand jury room but may confer with counsel after each question.

Another procedure available in Wisconsin for investigating criminal activities and initiating criminal complaints is the John Doe proceeding. Under this procedure, the judge examines the complainant and any witnesses. The extent to which a judge proceeds with such an examination is within the judge's discretion.

As with the grand jury proceedings, witnesses may have counsel present at the examination, but the counsel may not examine his or her client, cross-examine other witnesses or argue before the judge. Also, as under Wisconsin grand jury proceedings, following the issuance of a complaint, the defendant is entitled to a preliminary hearing [s. 968.26, Stats.].

Major differences between the John Doe proceeding and the Wisconsin grand jury system include the following:

a. Grand jury proceedings are secret. John Doe proceedings may be secret if so ordered by the judge [ss. 756.147 and 968.26, Stats.].

b. In a grand jury proceeding, a witness may be extradited to this state to testify from states which are parties to the Uniform Act for the Extradition of Prisoners as Witnesses and the Uniform Act for the Extradition of Witnesses in Criminal Actions [ss. 976.01 and 976.02, Stats.]. These Acts do not apply to the extradition of witnesses for John Doe proceedings.

Prior to 1980, under the Wisconsin grand jury system, witnesses had no right to the presence of counsel in the grand jury room. Also, prior to 1980, a defendant who was indicted by a grand jury was arraigned and tried on the indictment; he or she had no right to a preliminary hearing. These differences from a John Doe proceeding were eliminated by the enactment of Ch. 291, Laws of 1979.

Recommendation 4: Use reserve judges for preliminary hearings in drug cases.

Under current law, any person who is arrested must, within a "reasonable time," be taken before a judge for an initial appearance. At the initial appearance, the judge must inform the defendant of the charges against him or her, furnish the defendant with a copy of the complaint, inform the defendant of his or her right to counsel, inform any defendant who is charged with a felony that he or she is entitled to a preliminary hearing to determine whether there is probable cause to believe that he or she committed a felony and set bail for the defendant, unless the defendant is released without bail or on an unsecured appearance bond.

The preliminary hearing must be commenced either within 20 days after the initial appearance of the defendant, if the defendant has been released from custody or within 10 days after the initial appearance, if the defendant is in custody and bail has been fixed in excess of $500. The defendant may waive his or her right to a preliminary hearing [ss. 969.03 (1), 970.01 to 970.03, Stats.].

At the Special Committee's August 25, 1989 meeting, Peter Grimm, District Attorney, Fond du Lac County, suggested using reserve judges for preliminary hearings in drug cases. He said that currently, defendants are being released on unsecured appearance bonds (signature bonds) so that preliminary hearings do not have to be held within 10 days after the initial appearance.

Currently, there are two types of reserve judges: "permanent" reserve judges and "temporary" reserve judges. A "permanent" reserve judge is a judge appointed by the Chief Justice of the Supreme Court to serve an assignment for a period of six months. Permanent reserve judges perform the same duties as other judges and may be reappointed for subsequent periods. A "temporary" reserve judge is a judge appointed by the Chief Justice to serve specified duties, on a day-by-day basis, as the Chief Justice directs.

The following persons may serve as a reserve judge of the Court of Appeals or the circuit court for any county:

a. Any person who, as of August 1, 1978, served a total of eight or more years as a Supreme Court Justice or circuit court judge.

b. Any person who has served four or more years as a judge or justice of any court or courts of record and who was not defeated the most recent time he or she sought reelection to judicial office [s. 753.075 (1) and (2), Stats.].

Examples of the circumstances under which reserve judges are used include when a regular county judge is sick, attending a conference, on vacation or unavailable for other reasons; to help clear up a backlog of cases; or to hear a particular case, such as one which would remove a regular county judge from his or her regular caseload for an extended period.

Currently, two statutes require the use of reserve judges. Under s. 19.52 (2), Stats., the Ethics Board must appoint reserve judges to serve as hearing examiners in proceedings under subch. III, ch. 19, Stats., relating to the Code of Ethics for Public Officials and Employes. Under s. 9.01 (6) (b), Stats., a reserve judge must be used to hear an appeal of an election recount determination made by the Board of State Canvassers if the election is one which was held in more than one judicial circuit.

According to the Office of the Director of State Courts, currently there are 63 available reserve judges. According to the most recent annual questionnaire filled out by these judges, 47 of the currently available 63 reserve judges are willing to do criminal case assignments. However, all but seven of the 47 reserve judges who are willing to handle criminal cases fall into one or more of the following categories, which would limit their availability for preliminary hearings in drug cases:

a. Ten are active attorneys.

b. Twenty-two are out of the state during the winter months.

c. Eight have some limitations on the amount of time they are willing to work due to the effect on their Social Security payments.

d. Twenty-five are either rarely available for work or are currently working virtually full-time.

Furthermore, the remaining seven reserve judges, as well as other reserve judges, have self-imposed limitations on the geographical areas of the state in which they are willing to work.

According to the Office of the Director of State Courts, there have been several instances in the past year when the Office has been unable to find reserve judges available and willing to accept certain assignments.

Recommendation 5: Authorize the use of "drug-sniffing dogs" to establish probable cause for search and seizure by law enforcement personnel.

The Wisconsin and U.S. Constitutions prohibit the state from conducting unreasonable searches and seizures, and require that search

warrants be issued only upon probable cause [art. I, s. 11, Wis. Const.; 4th and 14th Amendments, U.S. Const.]. Probable cause refers to the probability that a crime has been committed and that the items to be seized are at the place to be searched. It is well settled that under the U.S. Constitution, a search conducted without a warrant issued upon probable cause is "per se" unreasonable, except in a few specific situations. Thus, except in those specific situations, law enforcement personnel must have a search warrant to conduct a search. If law enforcement personnel conduct a search without a warrant (or which is otherwise unreasonable), the evidence obtained through the search may not be introduced as evidence against the defendant at trial.

A search warrant is an order signed by a judge directing a law enforcement officer to conduct a search of a designated person, a designated object or a designated place for the purpose of seizing designated property or kinds of property. The law enforcement officer requesting a search warrant must provide information to the judge which demonstrates probable cause. The officer may provide this information through a sworn complaint or affidavit, testimony recorded by a phonographic reporter or through sworn oral testimony communicated to the judge by telephone, radio or other means of electronic communication, under procedures specified by statute [s. 968.12, Stats.].

At the August 25, 1989 meeting of the Special Committee, Police Chief James Sebestyen, North Fond du Lac Police Department, suggested that the Committee investigate the feasibility of utilizing drug-sniffing dogs to establish probable cause for the issuance of search warrants. He said that oftentimes informants would be more willing to share information with law enforcement agencies if they were not required to provide sworn testimony to a judge for the purpose of establishing probable cause for a search warrant.

The issue of whether there is, or was, probable cause to issue a search warrant is made on a case-by-case basis by the court. According to the U.S. Supreme Court:

> The task of the issuing magistrate is simply to make a practical, common-sense decision whether, given all the circumstances set forth in the affidavit before him,... there is a fair probability that contraband or evidence of a crime will be found in a particular place. And the duty of a reviewing court is simply to ensure that the magistrate had a "substantial basis for...conclud[ing]" that probable cause existed [emphasis added; Illinois v. Gates, 462 U.S. 213 (1982)].

Because the existence of probable cause is a constitutional issue, the Legislature cannot statutorily specify that testimony regarding the actions of drug-sniffing dogs is sufficient to establish probable cause.

C. PENALTIES

Recommendation 1: Subject juvenile drug dealers to the same penalties as adult drug dealers.

At the April 20, 1989 meeting of the Special Committee, Lieutenant William Kruziki, Waukesha County Sheriff's Department, said that minors between the ages of 16 and 17 years who are involved in the sale of controlled substances are as sophisticated as adults and should not be given only limited supervision or probation, as other juvenile offenders are. He suggested that juvenile drug law offenders be subjected to the same penalties as adult drug law offenders.

Under current law, the juvenile court has exclusive jurisdiction over children who are at least 12 years of age, but less than 18 years of age and who are alleged to be delinquent (i.e., to have violated any federal or state criminal law).

If the juvenile court adjudges a child delinquent, the court must enter an order prescribing the disposition of the case. The dispositions available to the court range from counseling the child to transferring legal custody of the child to the Division of Corrections (DOC) for placement in a "secured correctional facility." Other dispositions include forfeitures of up to $50, revocation of driving privileges, participation in a supervised work program and placement in a foster home.

A child may be placed in a secured correctional facility only if both of the following criteria are met:

a. The child has been found to be delinquent for the commission of an act which, if committed by an adult, would be punishable by a sentence of six months or more; and

b. The child has been found to be a danger to the public and to be in need of restrictive custodial treatment.

Children whose custody has been transferred to the DOC are placed in either of two juvenile reception centers administered by the Department of Health and Social Services (DHSS), Bureau of Juvenile Services: the Ethan Allen School at Wales or the Lincoln Hills School near Merrill.

At the request of the child or the district attorney, the juvenile court may relinquish its jurisdiction over a juvenile and transfer, or "waive," the juvenile's case to a court of criminal jurisdiction. The waiver changes the status of the child to that of an adult for purposes of prosecution of the particular case waived.

In considering whether to waive a case into adult court, the judge must first determine that the matter involving a juvenile has "prosecutive merit." In other words, there must be a showing that there is a reasonable probability that the juvenile has committed a violation of the criminal law [In Interest of TRB, 109 Wis. 2d 179, 325 N.W. 2d 329 (1982)].

If prosecutive merit is found, the juvenile court must then base its decision on whether to waive jurisdiction on the following criteria: (a) the personality and prior record of the juvenile; (b) the type and seriousness of the offense; (c) the adequacy and suitability of facilities, services and procedures available for treatment of the juvenile and protection of the public within the juvenile justice system; and (d) the desirability of a trial and disposition of the entire offense in one court, if the juvenile was allegedly associated in the offense with persons who will be charged with a crime in adult criminal court [s. 48.18 (5), Stats.].

A juvenile who is waived into adult criminal court is subject to all the same rights and penalties as an adult who is charged with the same crime. However, except under specified circumstances, the DHSS is required to keep all prisoners under 16 years of age (i.e., juveniles under 16 who are waived to adult court, convicted and sentenced to a state prison) in secured juvenile correctional facilities (i.e., Ethan Allen or Lincoln Hills). The DHSS may transfer such prisoners to adult correctional institutions after they attain age 16.

The DHSS may place a prisoner under age 16 in an adult correctional institution, if it determines that placement in such an institution is appropriate based on:

a. The juvenile's prior record of adjustment in a correctional setting, if any;

b. The juvenile's present and potential vocational and educational needs, interests and abilities;

c. The adequacy and suitability of available facilities;

d. The services and procedures available for treatment of the juvenile within the various institutions;

e. The protection of the public; and

f. Any other considerations promulgated by the DHSS by rule [ss. 53.18 (7) and 973.013 (3m), Stats.].

Current penalties for adult drug offenders are set forth in the Appendix to this Paper.

Recommendation 2: Revise the penalty structure for cocaine violations.

At the April 20, 1989 meeting of the Special Committee, Lieutenant William Kruziki, Waukesha County Sheriff's Department, said the limit on the quantity of cocaine which subjects violators to penalties should be lowered. Specifically, he said that since cocaine is commonly sold by the ounce and there are 28 grams in one ounce, the 30-gram limit should be lowered to 25 grams. Other persons made similar recommendations and comments.

1989 Assembly Bill 121 modifies the penalty structure for cocaine by lowering the substance amounts included under each range of penalties. Specifically, where current law establishes highest penalties for violations involving more than 30 grams of cocaine, Assembly Bill 121 makes those penalties applicable to violations involving more than 25 grams of cocaine. [See MEMO NO. 1 for a complete description of 1989 Assembly Bill 121 and its status. Current penalties are set forth in the Appendix to this Paper.]

Recommendation 3: Establish "boot camps" for first-time drug offenders.

At the July 25, 1989 meeting of the Committee, James Lee, Jr., Winnebago Drug Abuse Correction Center, said that tougher first sentences might deter drug offender recidivism. Mr. Lee also suggested creating a "drug offender status" within the correctional system which would ensure that persons convicted of drug-related offenses would be dealt with separately from other offenders. The Committee briefly discussed the effectiveness of "boot camps" for first-time offenders. There are currently no "boot-camp" type incarceration programs in Wisconsin.

According to the National Institute of Justice, "boot camp" incarceration programs, commonly referred to as "shock incarceration" (SI), were first implemented in the United States in 1983.

Shock incarceration involves a short period of confinement, typically three to six months, during which young offenders convicted of less serious, nonviolent crimes, who have not been in prison before, are

exposed to a demanding regimen of strict discipline, military-style drill and ceremony, physical exercise and physical labor. Some, but not all, SI programs also offer vocational training, education, and rehabilitative services.

Most SI programs operate within a conventional state prison, but with SI participants separated throughout their confinement from regular inmates. These programs are intended to deter participants from future crimes by giving them a close and sobering exposure to the realities of prison life, without subjecting them to abuse, exploitation, or corruption by hardened criminals.

In late 1988, 15 SI programs were operating in nine states, three more were scheduled to open in 1989 and at least nine other states were considering SI development [Shock Incarceration: An Overview of Existing Programs, National Institute of Justice, Office of Justice Programs, U.S. Department of Justice].

Recommendation 4: Revoke the motor vehicle operating privilege of any person convicted of the sale of controlled substances.

At the August 25, 1989 meeting of the Special Committee, Peter Grimm, District Attorney, Fond du Lac, suggested that the driver's license of any person convicted of selling drugs be revoked. He stated that revocation would be a useful law enforcement tool because law enforcement personnel may lawfully stop the car of a person suspected of driving after revocation. In addition, persons whose licenses have been revoked may be more susceptible to becoming unknowingly involved with undercover agents because of their need for a "chauffeur" when carrying out drug deals.

Current law does not provide for the revocation of a motor vehicle operator's license for any violation of the Uniform Controlled Substances Act.

1989 Assembly Bill 307 revises current penalties which apply to an underage person who commits an alcohol beverages violation and applies those penalties to children (under the age of 18 years) who commit controlled substances violations. Thus, under the Bill, if a court finds that a child has committed a violation related to the manufacture, delivery or possession of controlled substances, the court must order the following:

a. For a first violation, suspension of the child's motor vehicle operating privilege for 30 to 90 days.

b. For a second violation, revocation of the child's motor vehicle operating privilege for one year.

c. For a third or subsequent violation, revocation of the child's motor vehicle operating privilege for two years. [See MEMO NO. 1 for a complete description of 1989 Assembly Bill 307.]

Recommendation 5: Impose mandatory minimum penalties for controlled substance violations.

Several persons who made presentations to the Committee suggested that the Legislature enact mandatory minimum penalties for controlled substance violations. Enactment of a mandatory minimum penalty for a certain offense would require a judge to impose at least the mandatory sentence upon any person convicted of the offense, regardless of the circumstances of the particular crime.

Under current law, there are mandatory minimum prison sentences for certain drug crimes, but generally only for second or subsequent offenses involving larger amounts of controlled substances. [The penalties for controlled substances violations are set forth in the Appendix to this Paper.] In addition, several bills now pending before the Legislature would establish mandatory minimum penalties for certain controlled substance violations.

1989 Assembly Bill 221 establishes a separate penalty structure for offenses involving cocaine base (which has been construed to include "crack" cocaine) or alkaloid. The Bill includes mandatory minimum penalties for offenses involving certain amounts of those substances.

1989 Senate Bill 75 creates a new mandatory penalty of 30 years imprisonment for distribution of certain controlled substances to minors.

1989 Senate Bill 76 creates a mandatory sentence of life imprisonment for the illegal distribution of any Schedule I or II controlled substance which has a value of $50,000 or more.

1989 Senate Bill 247 revises the penalty structure for crimes relating to manufacturing or delivering, or possessing with intent to deliver cocaine, and creates a separate penalty structure for offenses involving "crack" cocaine. The Bill establishes mandatory minimum penalties for offenses involving those substances, which vary depending on the amount of substance involved.

[See MEMO NO. 1 for a complete description of these Bills.]

Recommendation 6: Restrict, and provide penalties for, the sale and use of drug paraphernalia.

At the May 8 and August 25, 1989 meetings of the Special Committee, Committee members Senator Carol Buettner and James Chizek raised the possibility of restricting, and providing penalties for, the sale and use of drug paraphernalia.

1989 Senate Bill 166 restricts, and provides penalties for, the sale and use of drug paraphernalia. The Bill is based on the Model Drug Paraphernalia Act developed by the Drug Enforcement Administration of the U.S. Department of Justice. In addition to providing a definition of "drug paraphernalia," the Bill sets forth various criteria to be used in determining whether a specific item is drug paraphernalia. These criteria include:

a. Statements by the owner or other person in control of the object concerning its use.

b. The proximity of the object to a controlled substance or a drug law violation.

c. The existence of any residue of controlled substances on the object.

d. Evidence of the intent of the owner or person in control of the object to deliver it to persons whom he or she knows intend to use it in violation of the drug laws.

e. Instructions or other materials provided with the object concerning its use.

f. Advertising or the manner in which the object is displayed for sale.

g. Whether the owner or person in control of the object is a legitimate supplier of like or related objects to the community.

h. Evidence of the ratio of sales of the object to the total sales of the business enterprise.

i. The existence and scope of legitimate uses for the object.

[See MEMO NO. 1 for a detailed description of Senate Bill 166 and its status.]

D. FORFEITURES AND SURCHARGES

Recommendation 1: Repeal the constitutional provision which requires all forfeitures to be deposited in the State School Fund.

Article X, section 2, of the Wisconsin Constitution, provides that the clear proceeds of all fines and forfeitures must be deposited in the School Fund. Article X, section 2, also requires that the interest from the School Fund be used, first, to support and maintain the common schools and, second, to support and maintain the normal schools. The statutes provide that the principal of the School Fund may be used only to make loans to school districts and municipalities [s. 24.61, Stats.]. [See MEMO NO. 2, Information on the School Fund and Statutory Surcharges on Fines and Forfeitures, dated May 1, 1989, for a complete description of the School Fund and laws relating to forfeiture of property.]

Numerous persons testifying to the Special Committee and Special Committee members said that local law enforcement agencies should be allowed to keep money from drug-related assets which they seize and which are forfeited. These persons argued that unless law enforcement agencies are allowed to keep at least some part of forfeited assets to fund law enforcement efforts, they will not aggressively pursue the seizure and forfeiture of assets.

It was also suggested that drug forfeiture money be allocated to district attorneys and courts, for costs related to the prosecution of drug law violations, and to the public defender.

Currently, there are two resolutions before the Legislature on first consideration which would amend art. X, s. 2, to allow the use of the proceeds of fines and forfeitures for drug law enforcement and other crime-related purposes: 1989 Senate Joint Resolution 34 and 1989 Assembly Joint Resolution 25. [See MEMO NO. 2 for a complete description of 1989 Senate Joint Resolution 34 and 1989 Assembly Joint Resolution 25.]

Recommendation 2: Create a surcharge on fines and forfeitures for drug law violations to fund drug law enforcement activities.

As described above, art. X, s. 2, Wis. Const., prevents the use of the proceeds of fines and forfeitures for non-School Fund purposes. In partial reaction to this limitation, surcharges have been placed on various fines and forfeitures to generate revenues for specific state and local programs.

The first such surcharge was enacted by the 1977 Legislature. Since 1977, 12 different surcharges have been created. None of the revenues

from the present surcharges are allocated specifically for drug law enforcement.

At the April 20, 1989 meeting of the Special Committee, Sergeant James Waid, Outagamie Sheriff's Department, suggested the imposition of a new surcharge on fines and forfeitures for drug law violations to fund drug law enforcement activities.

The Legislative Council's Special Committee on Surcharges on Fines and Forfeitures, created on May 25, 1988, was directed to undertake a comprehensive review of the various statutory surcharges. In its report to the Legislature, the Special Committee specifically recommended that no new surcharges be created. The Special Committee also recommended that the Legislature consider using funding from other sources to support programs supported by existing surcharges and that art. X, s. 2, Wis. Const., be amended to require the use of the proceeds of fines and forfeitures for programs relating to drug abuse, law enforcement and victims, witnesses and offenders. [See MEMO NO. 2 for a complete description of the Special Committee's recommendations regarding surcharges and a description of current surcharges and their administration.]

E. FUNDING

Recommendation 1: Increase the salaries of Department of Justice special agents and crime laboratory analysts.

At the April 20, 1989 meeting of the Special Committee, Attorney General Donald Hanaway said that he is concerned about the pay level of DOJ special agents, as compared to local law enforcement agents. He said that the low pay of these agents may contribute to their high turnover rate. Chief David Gorski, Appleton Police Department and Wisconsin Chiefs of Police Association, agreed that the pay level for DOJ agents is too low and that agents performing similar functions in Minnesota earn $10,000 more per year.

At the April 20, 1989 meeting, Attorney General Hanaway also said that he is concerned about the pay level for crime laboratory analysts.

Currently, crime laboratory analysts 1, 2, 3 and 4, are assigned to Pay Schedule 15, ranges 4, 5, 6 and 7, respectively. Their supervisors are assigned to Pay Schedule 1, ranges 15 and 16. The 1988-89 annual pay minimums, permanent status in class minimums (PSICM) and maximums, for those pay ranges are as follows, below:

CRIME LABORATORY
ANALYST PAY RANGES

PAY RANGE	ANNUAL BASIS		
	MINIMUM	PSICM	MAXIMUM
15-04	$23,425	$24,128	$33,149
15-05	25,218	25,976	35,921
15-06	27,150	27,966	38,928
15-07	29,229	30,106	42,194
1-15	$29,229	$30,106	$42,194
1-16	31,466	32,412	45,737

Currently, DOJ special agents 1, 2, 3, 4 and 5 are assigned to Pay Schedule 1, ranges 10, 11, 13, 14 and 15, respectively. The 1988-89 minimums, PSICM's and maximums for those pay ranges are as follows:

SPECIAL AGENT
PAY RANGES

PAY RANGE	ANNUAL BASIS		
	MINIMUM	PSICM	MAXIMUM
1-10	$20,211	$20,819	$28,240
1-11	21,759	22,412	30,595
1-13	25,218	25,976	35,921
1-14	27,150	27,966	38,928
1-15	29,229	30,106	42,194

Until the 1989-91 biennium, the assignment and reassignment of classifications to pay ranges and the determination of an incumbent's pay status resulting from position reallocation or reclassification were determined by the Secretary of the Department of Employment Relations. However, 1987 Wisconsin Act 331 amended the statutes to make these matters subjects of bargaining for represented state employes (i.e., those who bargain collectively) [s. 111.91 (1) (a), Stats.].

The dollar values of the pay ranges of the separate pay schedules are established in the Compensation Plan. The Compensation Plan is developed by the Secretary of Employment Relations and submitted to the Joint Committee on Employment Relations (JCOER) for approval. Following a public hearing, the JCOER may approve or modify the Secretary's proposal. The Governor may veto any modifications the JCOER makes to the Secretary's proposal [s. 230.12 (3), Stats.].

Annual pay increases provided to represented state employes are a subject of bargaining. Annual pay increases for nonrepresented state employes (i.e., those who do not bargain collectively) are determined through the Compensation Plan [ss. 111.91 (1) (a) and 230.12 (3), Stats.].

Crime laboratory analysts, other than supervisors, collectively bargain. Thus, the assignment and reassignment of their classifications to pay ranges and their annual pay increases are subjects of bargaining.

Crime laboratory analysts' supervisors and DOJ special agents do not collectively bargain. Thus, the assignment and reassignment of their classifications to pay ranges are determined by the Secretary of the Department of Employment Relations. Their annual pay increases are determined through the Compensation Plan.

A collective bargaining agreement between the state and the representative of the crime laboratory analysts has not yet been reached for the 1989-91 biennium. According to Mr. Joseph Pettitteri, Administrator, Classification and Compensation Division, Department of Employment Relations, the assignment of crime laboratory analysts to pay ranges has been discussed by the parties to these negotiations.

The 1989-91 Compensation Plan has not yet been submitted to JCOER.

Recommendation 2: Provide state funding for metropolitan enforcement groups.

At the April 20, 1989 meeting of the Committee, Lieutenant William Kruziki, Waukesha County Sheriff's Department, said that the state should consider providing state money to fund MEG's. He said that the participating local agencies pay the wages of the officers involved in the MEG units and pay for drug purchases, vehicles and other items. Federal money is used for drug buys and equipment as well, but not for officers' salaries.

Recommendation 3: Provide state funds for drug law enforcement equipment.

At the April 20, 1989 meeting of the Special Committee, Sergeant Hal Kump, Waukesha Police Department, Waukesha, said that his law enforcement agency would like more equipment for surveillance, for example, vans with periscopes, video recording equipment and night vision equipment.

In addition, Detective Doug Kennedy, Waukesha Police Department, Waukesha, said that local law enforcement officers want safer and more reliable equipment.

Sergeant James Waid, Outagamie Sheriff's Department and Wisconsin Sheriff's and Deputy Sheriff's Association, Appleton, said that local units of government are not willing to spend the necessary amounts of money on drug law enforcement equipment because they do not see a return on their money as they do on other equipment, such as radar guns.

Recommendation 4: Salaries of district attorneys.

At the May 8, 1989 meeting of the Special Committee, Committee member James Babler said that district attorneys should be paid more so that they stay on the job and become experienced. In addition, he said that, in larger counties, more district attorneys are needed.

1989 Wisconsin Act 31 (the Budget), enacted on August 3, 1989, converted district attorneys from county to state employes. Under the Act, district attorneys' salaries are computed as a percentage of the midpoint of Executive Salary Group 6. The percentage used varies according to the population of the county or counties in which the district attorney is elected.

For 1988-89, the minimum Executive Salary Group 6 is $52,741; the maximum is $80,695; and the midpoint is $66,718. The percentages used to compute district attorneys' salaries and the resulting 1988-89 salary levels are set forth in the following table:

PROSECUTORIAL UNIT (COUNTY) POPULATION	SALARY PERCENTAGE OF THE MIDPOINT OF ESG 6
More than 500,000	114% ($76,059)
250,001 - 500,000	95% ($63,382)
100,001 - 250,000	90% ($60,046)
75,001 - 100,000	85% ($56,710)
50,001 - 75,000	80% ($53,374)
35,001 - 50,000	75% ($50,038)
25,001 - 35,000	70% ($46,703)
15,001 - 25,000	65% ($43,367)
15,000 or less	60% ($40,031)

Adjustments to the dollar values of the minimums and maximums of the executive salary groups are established using the same process that is used to establish the Compensation Plan for other nonrepresented employes. That is, the Secretary of Employment Relations submits recommendations to the JCOER. The JCOER must hold a public hearing on the recommendations and may either approve or modify the Secretary's proposal. The Governor may veto any modifications that the JCOER makes in the Secretary's recommendations [ss. 20.923 (1) (intro.) and 230.12 (3), Stats.].

F. OTHER RECOMMENDATIONS

Recommendation 1: Require physicians to report cases of infant drug addiction to social services and law enforcement agencies.

Under current law, certain persons are required to report suspected child abuse and neglect cases to their county department of social services or police department, if they have reason to believe that a child seen in the course of their professional duties has been abused or neglected. Any such person who fails to report a case of suspected child abuse or neglect may be fined not more than $1,000 or imprisoned for not more than six months, or both. Current law does not require any person to report cases of drug addiction of infants to any person or agency.

At the August 25, 1989 meeting of the Committee, during the testimony of Sheriff Jim Gilmore, Fond du Lac County, the Special Committee discussed the problem of "cocaine babies" and the possibility of requiring persons in the medical profession to report cases of infant drug addiction to social services and law enforcement agencies.

1989 Assembly Bill 228, introduced on March 30, 1989 by Representative Duff and cosponsored by Senator Buettner, requires physicians, nurses and various other medical professionals to report cases of fetal alcohol syndrome or infant drug addiction to their county department of social services. [Assembly Bill 228 does not require reporting to law enforcement agencies.] Within 24 hours after receiving such a report, the county department must initiate an investigation to determine if the infant is in need of protection or services.

Under the Bill, a physician, nurse or other medical professional who fails to report a case of infant drug addiction may be fined not more than $1,000 or imprisoned not more than six months, or both. Any person who prevents or attempts to prevent a person from reporting as required under the Bill, may be fined not more than $1,000 or imprisoned not more than 90 days, or both.

Assembly Substitute Amendment 1 to 1989 Assembly Bill 228, offered by Representative Duff, contains the same provisions relating to infant drug addiction as does the Bill, as originally introduced. However, the Substitute Amendment deletes the provisions of the original Bill which would require reporting of cases of fetal alcohol syndrome.

1989 Assembly Bill 228 was referred to the Assembly Committee on Children and Human Services, which held a public hearing on the Bill on September 7, 1989, but has not yet taken any executive action on it.

Recommendation 2: Designate marijuana as a noxious weed.

Under current law, every person must destroy noxious weeds on all lands which the person owns, occupies or controls. The person having immediate charge of any public lands must destroy all noxious weeds on those lands. If any person fails to destroy noxious weeds, as required by law, the weed commissioner of the town, village or city within which the land is located must destroy the weeds. The cost of destruction of the weeds is then charged to the tract of land in the next tax roll [ss. 66.96 to 66.98, Stats.].

The statutes specify three plants as noxious weeds: Canada thistle, leafy spurge and field bindweed. Marijuana is not designated as a noxious weed. The statutes also authorize the governing body of any municipality or the county board of any county to designate, by ordinance or resolution, additional plants as noxious weeds.

At the July 25, 1989 meeting of the Special Committee, Kelly Campion, Detective, Marquette County Sheriff's Department, said that there should be more stringent penalties imposed upon persons who refuse to remove wild marijuana from their land. He said that certain landowners in Marquette County currently have marijuana growing wild on their land and have not taken any steps to eradicate it. In addition, persons testifying at the August 25, 1989 meeting of the Committee stated that there is a significant amount of marijuana growing wild in Wisconsin. Committee members suggested that marijuana should be designated as a noxious weed.

1987 Senate Bill 409, introduced in the 1987 Legislative Session by Senator Kreul, cosponsored by Representative Bolle, would have expanded the definition of "noxious weed" to include the marijuana plant. The Bill was referred to the Senate Committee on Urban Affairs, Energy, Environmental Resources and Elections, which held no hearings and took no action on the Bill. The Bill failed to pass pursuant to 1987 Assembly Joint Resolution 1.

Recommendation 3: Require all "drug offense probationers" to be assigned to one probation and parole agent with each region of the state.

The Bureau of Community Corrections, DOC, DHSS, is responsible for the supervision of all probationers and parolees in the state. For purposes of supervision, the state is divided into six regions. Generally, the Bureau determines the assignment of new probation and parole clients to agents based on the workload of each agent in the region where the client lives. An attempt is made to distribute the clients among the agents so that all agents have basically equivalent workloads. As a result, each agent is generally assigned a mixture of different types of clients, including some clients who were convicted of drug crimes.

The Bureau of Community Corrections does presently utilize the concept of "specialized caseloads" in Milwaukee. In Milwaukee, certain probation and parole agents specialize in the supervision of persons who are mentally ill, persons who were convicted of sexual assault crimes and persons who were arrested for drug crimes. There are currently 13 probation and parole agents in Milwaukee who specialize in the supervision of persons convicted of drug crimes.

In addition, there are 10 federally-funded probation and parole agent positions throughout the state which federal law requires to specialize in the supervision of felony drug offenders and persons with serious assaultive records. This program was described by Lloyd Lind, Unit Supervisor, Bureau of Community Corrections, in his July 25, 1989 testimony to the Committee.

At the August 25, 1989 meeting of the Committee, Peter Grimm, District Attorney, Fond du Lac County, suggested that one probation and parole agent in each region should be assigned to supervise all probationers and parolees who are drug abusers or who were convicted of drug crimes. He said this charge may allow probation and parole agents to develop expertise in the supervision of this type of client, gain knowledge about the drug trade in the area and be aware of any interactions among their clients.

According to Adelaide Crahn, Administrative Assistant, Bureau of Community Corrections, assigning all drug-related cases to one agent within one area may necessitate the hiring of additional probation and parole agents. She said that in general, the supervision of a drug offender requires much more time than the supervision of other types of offenders. Therefore, an agent who handles strictly drug offenders could not supervise as many people as a person with a general caseload.

Recommendation 4: Require triplicate prescriptions for controlled substances.

Under current law, controlled substances which have an accepted medical use in treatment in the United States may be dispensed pursuant to a written prescription issued by a medical practitioner. All controlled substance prescription orders must be dated and signed on the day issued and must contain the full name and address of the patient for whom the drug was prescribed, the name, address and registration number of the prescribing practitioner, the name and quantity of the drug prescribed, and the directions for use of the drug. Prescription orders must be written in ink or indelible pencil or be typewritten and must be signed by the practitioner.

All prescription orders must also be initialed and dated by the dispensing pharmacist as of the date the prescription is dispensed. If a prescription order is for a Schedule II controlled substance, and the person accepting the medication is not personally known to the pharmacist, the pharmacist must require the person accepting the medication to sign the prescription order and provide their address. In certain emergency situations, controlled substances may be dispensed pursuant to an oral prescription [ss. 161.15 and 161.38, Stats., and ss. Phar 8.05 and 8.09, Wis. Adm. Code]. [See Staff Brief 89-1 for a description of the various "schedules" into which the Uniform Controlled Substances Act classifies controlled substances.]

Under current law, any pharmacy, medical practitioner or other person who dispenses controlled substances must maintain complete and accurate records of each controlled substance dispensed. The records must be made available for inspection by authorized persons for at least five years from the date of the record. The records must contain, among other information, the name of the substance, the quantity of the substance, the name and address of the person for whom the substance was dispensed and the name or initials of the individual who dispensed this substance [s. Phar 8.02, Wis. Adm. Code].

At the August 26, 1989 meeting of the Special Committee, Fred Nickels, Training Specialist, DCI, suggested that triplicate prescriptions be required in Wisconsin. He said that triplicate prescriptions, which are required in other states, have been effective in preventing the diversion of controlled substances intended for medical use.

According to Carolyn Kelly, Special Agent, Conspiracy Unit, Bureau of Narcotics and Dangerous Drugs, DOJ, in states which require triplicate prescriptions, the state issues pads of numbered prescription forms to physicians and keeps a record of the prescription numbers issued to each physician. When a physician issues a prescription, the physician keeps

one copy of the prescription and gives two copies to the patient. When the patient has the prescription filled, he or she must submit both copies to the pharmacy. The pharmacy retains one copy for its records and sends the other copy to the state. The state maintains a computer file of information on all prescriptions filled in the state, including the type of drug dispensed, the name of the prescribing physician and the name of the person to whom the drug was prescribed.

Recommendation 5: Direct the Office of Justice Assistance to target federal funding to specific areas of the state.

At the April 20, 1989 meeting of the Special Committee, Chief David L. Gorski, Appleton Police Department, Appleton, said that if additional state funding for drug law enforcement is not provided, the OJA should change the way it allocates federal drug law enforcement moneys to local law enforcement agencies. Specifically, Chief Gorski said the OJA should target specific areas of the state rather than distribute the funds to all regions of Wisconsin, as it currently does. In addition, at the May 8, 1989 meeting of the Committee, Representative Lautenschlager said she had talked to other police chiefs who agree with Chief Gorski's suggestion.

The primary function of the OJA related to drug law enforcement is administration of grants received by the state under the Federal Anti-Drug Abuse Act. At the May 8, 1989 meeting of the Committee, Theodore Meekma, Executive Director, OJA, stated that in general. The current OJA distribution of federal grant moneys is based 70% on population, 20% on a crime index and 10% on land area. In Wisconsin, grants have been administered through the lead agencies of multi-agency drug enforcement units, rather than being provided directly to local law enforcement agencies. [For a complete description of the OJA's administration of the Federal Anti-Drug Abuse Act moneys, including the amounts received by the state and the amounts distributed to multi-agency drug enforcement units, see Staff Brief 89-1.]

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APPENDIX

PENALTIES FOR CONTROLLED SUBSTANCES VIOLATIONS

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE	
1. Heroin: 3 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to 15 years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 30 years.
2. Heroin: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned six months to 15 years. Second or subsequent offenses: shall be fined $2,000 to $500,000 and shall be imprisoned one to 30 years.
3. Heroin: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.
4. Other Schedule I or II Narcotics	Same as penalty under A, 1, above.
5. PCP, Amphetamine or Methamphetamine: 3 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 10 years.
6. PCP, Amphetamine or Methamphetamine: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned 6 months to five years. Second or subsequent offenses: shall be fined $2,000 to $500,000 and shall be imprisoned one to 10 years.
7. PCP, Amphetamine or Methamphetamine: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE (continued)	
8. LSD: one gram or less	Same as penalty under A, 5, above.
9. LSD: over one gram and up to five grams	Same as penalty under A, 6, above.
10. LSD: over five grams	Same as penalty under A, 7, above.
11. Psilocin or Psilocybin: 100 grams or less	Same as penalty under A, 5, above.
12. Psilocin or Psilocybin: over 100 grams and up to 500 grams	Same as penalty under A, 6, above.
13. Psilocin or Psilocybin: over 500 grams	Same as penalty under A, 7, above.
14. Cocaine: 10 grams or less	First offense: shall be fined $1,000 to $200,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and may be imprisoned up to 10 years.
15. Cocaine: over 10 grams and up to 30 grams	First offense: shall be fined $1,000 to $250,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years.
16. Cocaine: over 30 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
A. MANUFACTURING OR DELIVERING A CONTROLLED SUBSTANCE (continued)	
17. THC (chemical in marijuana): 500 grams or less	First offense: shall be fined $500 to $25,000 and may be imprisoned up to three years. Second or subsequent offenses: shall be fined $1,000 to $50,000 and may be imprisoned up to six years.
18. THC: over 500 grams and up to 2,500 grams	First offense: shall be fined $1,000 to $50,000 and shall be imprisoned three months to three years. Second or subsequent offenses: shall be fined $2,000 to $100,000 and shall be imprisoned six months to six years.
19. THC: over 2,500 grams	First offense: shall be fined $1,000 to $100,000 and shall be imprisoned one to 10 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and shall be imprisoned two to 20 years.
20. Other Schedule I or II Non-Narcotics	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
21. Schedule III	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
22. Schedule IV	First offense: may be fined up to $10,000 and may be imprisoned up to three years. Second or subsequent offenses: may be fined up to $20,000 and may be imprisoned up to six years.
23. Schedule V	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER	
1. Heroin: 3 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to 15 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and may be imprisoned up to 30 years.
2. Heroin: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to 15 years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 30 years.
3. Heroin: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.
4. Other Schedule I or II Narcotics	Same as penalty under B, 1, above.
5. PCP, Amphetamine or Methamphetamine: 3 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to five years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and may be imprisoned up to 10 years.
6. PCP, Amphetamine or Methamphetamine: over 3 grams and up to 10 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 10 years.
7. PCP, Amphetamine or Methamphetamine: over 10 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned two to 30 years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER (continued)	
8. LSD: one gram or less	Same as penalty under B, 5, above.
9. LSD: over one gram and up to five grams	Same as penalty under B, 6, above.
10. LSD: over five grams	Same as penalty under B, 7, above.
11. Psilocin or Psilocybin: 100 grams or less	Same as penalty under B, 5, above.
12. Psilocin or Psilocybin: over 100 grams and up to 500 grams	Same as penalty under B, 6, above.
13. Psilocin or Psilocybin: over 500 grams	Same as penalty under B, 7, above.
14. Cocaine: 10 grams or less	First offense: shall be fined $1,000 to $100,000 and may be imprisoned up to five years. Second or subsequent offense: shall be fined $2,000 to $200,000 and may be imprisoned up to 10 years.
15. Cocaine: over 10 grams and up to 30 grams	First offense: shall be fined $1,000 to $200,000 and shall be imprisoned six months to five years. Second or subsequent offenses: shall be fined $2,000 to $400,000 and shall be imprisoned one to 10 years.
16. Cocaine: over 30 grams	First offense: shall be fined $1,000 to $500,000 and shall be imprisoned one to 15 years. Second or subsequent offenses: shall be fined $2,000 to $1,000,000 and shall be imprisoned up to two to 30 years.

OFFENSE	PENALTY
B. POSSESSION OF A CONTROLLED SUBSTANCE WITH INTENT TO MANUFACTURE OR DELIVER (continued)	
17. THC (chemical in marijuana): 500 grams or less	First offense: shall be fined $500 to $25,000 and may be imprisoned up to three years. Second or subsequent offenses: shall be fined $1,000 to $50,000 and may be imprisoned up to six years.
18. THC: over 500 grams and up to 2,500 grams	First offense: shall be fined $1,000 to $50,000 and shall be imprisoned three months to five years. Second or subsequent offenses: shall be fined $2,000 to $100,000 and shall be imprisoned six months to 10 years.
19. THC: over 2,500 grams	First offense: shall be fined $1,000 to $100,000 and shall be imprisoned one to 10 years. Second or subsequent offenses: shall be fined $2,000 to $200,000 and shall be imprisoned two to 20 years.
20. Other Schedule I or II Non-Narcotics	Same as penalty under B, 17, above.
21. Schedule III	First offense: may be fined up to $15,000 and may be imprisoned up to five years. Second or subsequent offenses: may be fined up to $30,000 and may be imprisoned up to 10 years.
22. Schedule IV	First offense: may be fined up to $10,000 and may be imprisoned up to three years. Second or subsequent offenses: may be fined up to $20,000 and may be imprisoned up to six years.
23. Schedule V	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.

OFFENSE	PENALTY
C. CONSPIRACY TO MANUFACTURE, DELIVER OR POSSESS WITH INTENT TO MANUFACTURE OR DELIVER CONTROLLED SUBSTANCES	
1. Cocaine	Same as penalties applicable to manufacturing, delivering or possessing with intent to manufacture or deliver cocaine, by weight.
2. Substances Other Than Cocaine	Same as penalties applicable to manufacturing, delivering or possessing with intent to manufacture or deliver the controlled substance.
D. POSSESSION OF CONTROLLED SUBSTANCES	
1. Heroin	First offense: may be fined up to $5,000 and may be imprisoned up to one year. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years.
2. Other Schedule I or II Narcotics	Same as penalty under D, 1, above.
3. Cocaine	First offense: may be fined $250 to $5,000 and may be imprisoned up to one year in county jail. Second or subsequent offenses: may be fined $500 to $10,000 and may be imprisoned up to two years in state prison.
4. LSD, PCP, Amphetamine, Methamphetamine, Psilocin or Psilocybin	First offense: may be fined up to $5,000 and may be imprisoned up to one year in county jail. Second or subsequent offenses: may be fined up to $10,000 and may be imprisoned up to two years in state prison.
5. THC (chemical in marijuana)	First offense: misdemeanor; may be fined up to $1,000 and may be imprisoned up to six months in county jail. Second or subsequent offenses: felony; may be fined up to $2,000 and may be imprisoned up to one year in state prison.
6. Other Schedule I or II Non-Narcotics	Same as penalty under D, 4, above.
7. Schedule III, IV or V	Same as penalty under D, 4, above.

OFFENSE	PENALTY
E. DISTRIBUTION OF CONTROLLED SUBSTANCES TO MINORS THREE OR MORE YEARS YOUNGER	
1. Cocaine	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
2. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine and THC	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
3. All Controlled Substances Other Than Those Under 1 and 2, above	Same fine applicable to manufacture or delivery of substance; up to twice the prison term; or both.
F. DISTRIBUTION OF CONTROLLED SUBSTANCES TO PRISONERS	
1. Cocaine	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of cocaine.
2. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine and THC	Double minimum and maximum fines and prison terms applicable to manufacture and delivery of substance.
3. All Controlled Substances Other Than Those Under 1 and 2, above.	Same fine applicable to manufacture or delivery of substance; up to twice the prison term; or both.
G. DISTRIBUTION OF OR POSSESSION WITH INTENT TO DELIVER A CONTROLLED SUBSTANCE ON OR WITHIN 1,000 FEET OF A SCHOOL, PARK, POOL, YOUTH OR COMMUNITY CENTER OR A SCHOOL BUS	
1. Heroin, PCP, LSD, Psilocin, Psilocybin, Amphetamine, Methamphetamine, Any Form of THC.	Maximum term of imprisonment applicable to distribution of particular substance increased by five years.
2. Any Controlled Substance Listed in Schedules I or II Except 25 Grams or Less of THC	Shall be imprisoned three years; not eligible for probation; not eligible for parole until three years are served in prison.
3. 25 Grams or Less of THC	Shall be imprisoned at least one year; not eligible for probation; not eligible for parole until one year is served in prison.

OFFENSE	PENALTY
H. POSSESSION OF A CONTROLLED SUBSTANCE ON OR WITHIN 1,000 FEET OF A SCHOOL, PARK, POOL, YOUTH OR COMMUNITY CENTER OR SCHOOL BUS	
1. Schedule I or II	Shall be sentenced to 100 hours of community service work; driver's license shall be revoked for six months to two years.

In addition to the offenses and penalties above, ch. 161 defines the following offenses and penalties for their commission:

161.38 PRESCRIPTIONS. (1) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, no controlled substance in schedule II may be dispensed without the written prescription of a practitioner.

(2) In emergency situations, as defined by rule of the pharmacy examining board, schedule II drugs may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with rules of the pharmacy examining board promulgated under s. 161.31. No prescription for a schedule II substance may be refilled.

(3) Except when dispensed directly by a practitioner, other than a pharmacy, to an ultimate user, a controlled substance included in schedule III or IV, which is a prescription drug, shall not be dispensed without a written or oral prescription of a practitioner. The prescription shall not be filled or refilled except as designated on the prescription and in any case not more than 6 months after the date thereof, nor may it be refilled more than 5 times, unless renewed by the practitioner.

(4) A controlled substance included in schedule V shall not be distributed or dispensed other than for a medical purpose.

(5) No practitioner shall prescribe, orally or in writing, or take without a prescription a controlled substance included in schedule I, II, III or IV for the practitioner's own personal use.

161.42 PROHIBITED ACTS B--PENALTIES. (1) It is unlawful for any person knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for manufacturing, keeping or delivering them in violation of this chapter.

(2) Any person who violates this section may be fined not more than $25,000 or imprisoned not more than one year or both.

161.43 PROHIBITED ACTS C--PENALTIES. (1) It is unlawful for any person:

(a) To acquire or obtain possession of a controlled substance by misrepresentation, fraud, forgery, deception or subterfuge;

(b) To make, distribute or possess any punch, die, plate, stone or other thing designed to print, imprint or reproduce the trademark, trade name or other identifying mark, imprint or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof so as:

1. To counterfeit a drug; or

2. To duplicate substantially the physical appearance, form, package or label of a controlled substance.

(2) Any person who violates this section may be fined not more than $30,000 or imprisoned not more than 4 years or both.

161.435 SPECIFIC PENALTY. Any person who violates s. 161.38 (5) may be fined not more than $500 or imprisoned not more than 30 days or both.

161.44 PENALTIES UNDER OTHER LAWS. Any penalty imposed for violation of this chapter is in addition to, and not in lieu of, any civil or administrative penalty or sanction otherwise authorized by law.